

Senate Bill No. 1094

CHAPTER 673

An act to amend Section 2401 of the Business and Professions Code, and to amend Section 1206 of the Health and Safety Code, relating to medicine.

[Approved by Governor October 3, 1997. Filed
with Secretary of State October 6, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, Schiff. Medicine: employment of physicians and surgeons.

Existing law governing the licensure of clinics prohibits the operation of a clinic without a license from the State Department of Health Services. Existing law provides certain exceptions to this requirement for, among other things, a clinic operated by a nonprofit corporation that conducts medical research and health education and provides health care through a group of 40 or more physicians who are independent contractors and meet other prescribed requirements. Existing law, the Medical Practice Act, also establishes certain restrictions regarding the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity.

This bill would provide an exception to the licensure requirement for a clinic that is a nonprofit corporation, as described, and satisfies prescribed requirements regarding medical research and the receipt of charitable contributions and bequests. The bill would also amend the Medical Practice Act to provide an exemption for this type of clinic from the restrictions on the employment of licensed physicians and surgeons and podiatrists by corporations provided that the clinic does not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

This bill would also require this type of clinic and any other interested party to make a report to the Legislature and it would also provide that the above-described exception to the licensure requirement would remain operative only until January 1, 2003.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Small, freestanding, nonprofit research institutes are important in transferring new health science technology to the public.

(b) The development of new medical technology is capital-intensive.

(c) Small, freestanding, nonprofit institutes can fill important research needs by performing research that would be financially unacceptable to for-profit entities.

(d) In order to obtain general acceptance of a new technology by third-party payers, small, freestanding, nonprofit institutes may need to provide clinical services to obtain clinical data necessary for a new procedure's general acceptance.

(e) Some of these procedures may be reimbursed by third-party payers, and this reimbursement, in turn, can fund additional medical research.

(f) The Legislature intends that small nonprofit research institutes that fit within the qualifications set forth in this act be organized and operated exclusively for research purposes, but at the same time be able to obtain reimbursement where necessary to achieve payer acceptance of new and emerging technology.

(g) The Legislature reaffirms that Section 2400 of the Business and Professions Code provides an important protection for patients and physicians from inappropriate intrusions into the practice of medicine and further intends that the nonprofit institutes not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

(h) The Legislature further intends that the nonprofit institutes not become an active participant in the commercial practice of medicine or otherwise engage in direct patient care activities on a routine basis.

SEC. 2. Section 2401 of the Business and Professions Code is amended to read:

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division of Licensing or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

SEC. 3. Section 1206 of the Health and Safety Code is amended to read:

1206. This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 which is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations which utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and which is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning which teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic which is operated by a primary care community or free clinic and which is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this paragraph shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340) of Division 2.

(j) Student health centers operated by public institutions of higher education.



(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exception to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act, Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(l) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, which conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center as defined in Section 5601.5 of the Welfare and Institutions Code.

(p) (1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfies all of the following requirements:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars (\$5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y (a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 or a disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an additional period of up to three years following such approvals, but only to the extent necessary to maintain clinic expertise in the procedure or application for purposes of actively providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating, the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as “affiliated” only if it directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as “associated” only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). Any activity by a clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) This subdivision shall remain operative only until January 1, 2003. Prior to extending or deleting that operative date, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings.

